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DEPARTMENT FOR AF/W AND OES/PCI
COMMERCE FOR ANESA/CHRISTIAN REED AND MAC/HOLLY VINEYARD

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SUBJECT: NEWMONT TO PAY DEARLY FOR CHEMICAL SPILL

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1. (SBU) SUMMARY: U.S. corporation Newmont Mining's Ghanaian subsidiary has agreed to pay \$5 million in compensation to the Government of Ghana (GOG) for a chemical spill that occurred in October 2009 at the company's Ahafo gold mine. The GOG commission that investigated the incident determined the amount of the payment and concluded that Newmont behaved negligently and initially attempted to "cover-up" the spill, because of a two-day delay in notifying Ghanaian authorities of the incident. The huge compensation payment for an environmental accident is unprecedented by Ghanaian standards and sends a strong deterrent message that the GOG expects high safety standards and strong environmental compliance from extractive industry participants. While disputing that there was an attempt to conceal the incident from regulators or the local community, Newmont executives told us the company does not intend to appeal the hefty payment proposed by the commission. The company wants to maintain good relations with the GOG and not jeopardize its greater than \$500 million investment in Ghana, especially with several key permits and licenses currently subject to government approval. END SUMMARY.

Mishandled Chemical Spill at Ahafo Gold Mine

2. (SBU) On October 8, 2009, gold ore processing solution containing sodium cyanide spilled out of a processing pond in Newmont's Ahafo gold mine. Initially, Newmont managers at the mine believed that the chemical solution had not escaped from Newmont's property, but over the next two days, it became clear that the solution had migrated from Newmont's site to neighboring properties, probably because of heavy rains in the area at that time. The solution entered nearby bodies of water used by about 30 rural Ghanaian residents for fishing and for washing laundry. Several hundred fish in these ponds were killed, although it is not clear whether the fish died from the cyanide solution or from a bleaching agent that Newmont applied to neutralize the original solution (both bleach and cyanide are toxic to fish).

3. (SBU) In discussions of the incident with GOG officials and with Embassy Officers, Newmont's senior executives in Ghana acknowledge that the mining managers made a number of blunders in handling and responding to the incident. These missteps included:

-- Using an overflow "event pond" to store cyanide solution while the mine was temporarily shut down for three days. This was an inherently unsafe practice that is inconsistent with both Newmont's own internal controls and with standard international mining practices. Compounding this error, there was no mineworker assigned to monitor the water level in the event pond, and an electronic water level sensor malfunctioned and failed to send out an alarm signal when the pond overflowed.

-- Mine managers failed to immediately notify Newmont's management in Accra, the local community, and the Ghanaian mining and environmental regulators of the incident. Newmont's management in Accra only learned of the incident 24 hours later on October 9, and no one notified the local community or GOG authorities until nearly 48 hours later on October 10.

-- The company failed to properly trace and contain the spill after it escaped from the event pond. Mine workers successfully blocked one drainage area around the event pool, but failed to block off a second catchment area from which the solution ultimately appears to have made its way off of Newmont's property and into neighboring lands and bodies of water.

14. (U) Once Newmont learned about fish being killed in neighboring ponds, the company immediately began supplying those households with potable water, and has continued to do so ever since, because of the local community's lingering concerns about the safety of the water supply around the mine. The company also issued press releases apologizing for the incident, assured the public that it would be supplying fresh water to affected communities and not jeopardize their safety, and that it would cooperate fully with Ghanaian authorities in investigating the incident. Subsequent testing by Newmont and GOG authorities has not revealed any trace elements of cyanide or bleach that would pose a danger to either humans or wildlife in the area.

Investigation of the Incident

15. (SBU) A GOG commission tasked with investigating the incident

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concluded that Newmont behaved negligently in responding to the spill. In addition, given the two-day delay in notifying authorities about the incident, the commission concluded that the company initially attempted to "cover up" the fact that a spill had occurred. The commission concluded that Newmont should pay 7 million cedis (equivalent to about \$5 million) in compensation for the incident, with 45 percent of the proceeds to be used for the benefit of local communities living around the mine, 40 percent for the Ghana Environmental Protection Agency (EPA), and 15 percent to be shared by inspection divisions of the Ghana Minerals Commission and the EPA.

16. (SBU) The acting director of the EPA's Mining Section shared his views of the incident in a meeting with embassy officers on January 21. He stated that Newmont should have notified the EPA immediately of the incident, instead of nearly two days after the spill had occurred, which would have allowed company and regulatory officials to conduct joint monitoring of the spill. Prior to this incident, he noted that Newmont had always notified the EPA of significant environmental accidents the same day that they occurred. Thus, it was difficult to comprehend why the company had behaved "so unprofessionally" and delayed notifying the regulator in this case. He also noted that the company had poor internal safety controls in place at the mine at the time of the incident, and had not effectively disseminated information about the spill within the company itself, or communicated with the local community about the potential danger.

17. (SBU) The EPA official noted that Ghana does not currently have a regulatory framework governing the scale of fines and compensation in the event of environmental accidents at mines, and the commission had recommended that the government establish a detailed regulatory framework to cover future accidents. He stated that EPA, mining and environmental officials would be working in the coming months to establish specific fines and compensation in consultation with industry participants and other stakeholders, before submitting a proposal to the government and legislature.

18. (SBU) The lack of specific regulations meant that the Commission was free to take any reasonable action in determining remedial action and compensation for the spill. He explained that it had

been difficult to assign any precise monetary figures regarding the amount of environmental damage, the extent of the spill, and the potential loss of biodiversity in the region, largely because of Newmont's delay in notifying the regulator of the incident. He was at pains to stress that the \$5 million award was not a "fine," but rather "compensation" for the incident, considering all of the government manpower and resources that had been deployed to respond to the incident and conduct a lengthy investigation.

¶9. (SBU) In his public comments on the incident, Deputy Minister of Environment, Science and Technology Edward Omane Boamah, who served as chairman of the investigatory commission, said that the proceeds of the compensation award against Newmont would be used to improve infrastructure in local communities around the Ahafo mine, and to strengthen the capacity and expertise of the institutions charged with regulating the mining industry. (NOTE: Newmont Ghana executives told us that many senior officials in the Ministry of Environment, Science and Technology feel that the EPA has historically been "soft" on the mining industry. In Newmont's view, the hefty compensation award may reflect a new desire within the GOG to implement a tougher environmental enforcement policy at the EPA. Newmont representatives also told us that the Deputy Minister has close ties to WACAM, a Western Ghanaian association of communities affected by mining that has been a vocal opponent of many international gold mining operations in Ghana. END NOTE)

Newmont's View of the Incident

¶10. (SBU) Newmont's Ghana executives do not dispute that there was negligence in this instance, or that the mine operators bungled the response to the chemical spill. They do, however, object to the commission's finding that the company appeared to have engaged in a "cover-up." Instead, they argue that the delay in notifying the local community and regulators resulted from a mistaken but honest initial belief that the spillage had not escaped from Newmont's property.

¶11. (SBU) In its discussions with GOG regulators, Newmont had proposed paying compensation in the amount of \$1 million. They thought that the much higher \$5 million compensation award that the GOG commission determined was meant to serve as a deterrent for Newmont and other mining companies. (NOTE: Regulators do not disagree with this assessment, and the head of the EPA's Mining Section also told us that the size of the fine would have a deterrent effect on industry participants and lead to safer mining

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practices from both Newmont and other gold producers. END NOTE.) Newmont executives also noted that the hefty fine would help shore up the government's budget deficit.

¶12. (SBU) Newmont executives told us that the company would not be appealing the \$5 million penalty determined by the commission, even though it was five times higher than the compensation package that the company had proposed. Senior managers explained that the company wants to maintain good relations with the GOG and not jeopardize its greater than \$500 million investment in Ghana, especially with several key permits and licenses currently subject to government approval. They also stated that that they are more concerned about the damage to the company's reputation in Ghana from the way the incident was handled -- and the allegations of a "cover-up" -- than they are about the hefty fine.

¶13. (SBU) Based on discussions with GOG regulators and the commission findings, Newmont is taking several corrective actions to prevent a similar accident from occurring in the future at its Ghana mines, including improving the safety controls at event pools and flood control dams, improving and speeding up communications to relevant stakeholders after environmental incidents (including both regulators and local communities), and implementing enhanced safety procedures and protocols at mine sites.

COMMENT

¶14. (SBU) Despite the initially bungled response to the chemical spill, it is clear that Newmont is now taking prompt action to improve the safety of its operations in Ghana and restore its damaged reputation. Moreover, the company is clearly concerned about good corporate citizenship in its local operations, and Newmont Ghana's chief management officer in Ghana sits on the AmCham Board. We believe that the hefty monetary penalty levied in this case will not only serve to chastise Newmont, but also send a strong message to other extractive industry participants that the GOG is getting tough on environmental issues. That said, the size of the fine in this case also raises the possibility that the GOG may begin looking for other opportunities to extract the maximum amount of revenue from well-heeled foreign firms when they violate domestic regulations. It is also far from clear that the GOG will be as tough on domestic firms on environmental and safety issues -- for instance, the Tema Oil Refinery's recent deadly fire (to be reported septel) -- as it will be on the wealthy foreign companies doing business in Ghana.

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